

**COUNTY AIRSPACE LICENSE AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, between **FLORIDA ROCK INDUSTRIES, INC.**, Florida corporation, (hereinafter "Florida Rock") whose mailing address is 155 East 21 Street, Jacksonville, Florida 32206, **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida whose mailing address is 111 NW 1st Street, Miami, Florida, 33128-1970 (hereinafter "County").

WITNESSETH:

**WHEREAS**, the County has acquired sufficient legal right, title and interest in the right of way of Northwest 41<sup>st</sup> Street between Northwest 127<sup>th</sup> Avenue and Northwest 137<sup>th</sup> Avenue which includes the property legally described in **Exhibit "A"** attached hereto and made a part hereof; and

**WHEREAS**, the County desires to grant an exclusive license to Florida Rock to occupy and use the airspace above grade-line of the property described in **Exhibit "A"**, which airspace is legally described in **Exhibit "B"**, attached and made a part hereof (the "Airspace"), for the purpose of constructing, operating and maintaining an enclosed conveyor system for the transportation of limerock over and above NW 41<sup>st</sup> Street that separates Florida Rock's mining operations from its plant operations; and

**WHEREAS**, it does not appear that the proposed use will impair the full use, maintenance and safety of the roadway; require or allow vehicular access to such space directly from the established grade-line of said roadway; or interfere with the free flow of traffic on said roadway.

**NOW, THEREFORE**, in consideration of the premises, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the County and Florida Rock do hereby mutually agree as follows

**1. RECITALS; TERM**

The foregoing recitals are true and correct and are incorporated herein by this reference. The County hereby grants Florida Rock an exclusive license to occupy and use the Airspace located above the grade-line of NW 41<sup>st</sup> Street, legally described in Exhibit B for a period of ten (10) years beginning with the date of this Agreement. This Agreement will automatically renew for additional ten (10) year periods unless either party notifies the other party of the termination of this Agreement in writing by registered mail, no later than two (2) months (60 days) prior to the renewal date. Neither the County nor Florida Rock has any obligation whatsoever to renew this Agreement for any renewal period.

## 2. TAXES

Florida Rock shall be responsible for all state, county, city, and local taxes that may be assessed against the Airspace and structures contained therein, including real property taxes and special assessments.

## 3. USE, OCCUPANCY, AND MAINTENANCE

- a. Florida Rock shall be responsible for developing and operating the Airspace as set forth herein.

- b. Florida Rock's proposed use of the Airspace is as follows:

An aerial crossing of NW 41<sup>st</sup> Street by an enclosed conveyor system (the "Conveyor Facility") for the safe and effective transportation of limerock materials from an existing mining operation to a future plant facility.

- c. The general design for the use of the Airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the Airspace in relation to the roadway and the Conveyor Facility are set forth in composite **Exhibit "C"** attached hereto and by this reference made a part hereof.
- d. Any change in the authorized use of the Airspace or revision in the design or construction of the Conveyor Facility described in **Exhibit "C"** shall require prior written approval from the Director of the Public Works Department of Miami-Dade County, which approval shall not be unreasonably withheld.
- e. The County, through its duly authorized representatives, employees, and contractors, after providing Florida Rock reasonable written notice, except in the event of an emergency, may enter the Conveyor Facility at any time for the purpose of inspection, maintenance, or reconstruction of the roadway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is deemed by the County in its sole discretion as reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard. The County shall be responsible for all damages, liabilities, claims, costs and expenses (including, reasonable attorney's fees and court costs at trial and all appellate levels) incurred by Florida Rock and that are caused as a result of the sole actions of the County in conducting its inspection, maintenance, or reconstruction of the roadway and adjacent facilities or surveying, drilling, monitoring well installations, sampling, remediation or any other action necessary to carry out an environmental assessment or abate a nuisance.
- f. Florida Rock, at its sole cost and expense, shall maintain the Conveyor Facility occupying the Airspace so as to assure that the structures and the area within the road right of way boundaries will be kept in good condition, both as to safety and

appearance. Such maintenance will be accomplished in a manner so as not to cause any unreasonable interference with the roadway use. In the event that Florida Rock fails to so maintain the Conveyor Facility, the County, through its duly authorized representatives, employees, and contractors, may enter the Conveyor Facility to perform such work, and the cost thereof shall be chargeable to Florida Rock and shall be immediately due and payable to the County upon the performance of such work and Florida Rock's receipt of an invoice therefor.

- g. Florida Rock shall paint on both sides of the Conveyor Facility the actual height clearance of said facility for approaching traffic on N.W. 41<sup>st</sup> Street. In addition, Florida Rock shall install standard traffic clearance height limitation signs for approaching traffic 300 feet from said Conveyor Facility in each directional approach toward said facility on N.W. 41<sup>st</sup> Street. Any and all other signage, including advertisements, is prohibited.
- h. The design, occupancy, and use of the Airspace shall not adversely affect the use, safety, appearance, or enjoyment of the roadway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.
- i. When, due solely to the actual use of the Airspace, additional roadway facilities are required, such facilities shall be provided by Florida Rock without cost to the County, shall be designed and built in accordance with County standards and shall be subject to County approval or, in lieu thereof, Florida Rock shall either pay the County the actual cost of such additional roadway facilities or Florida Rock may terminate this Agreement.
- j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the Airspace.
- k. Florida Rock shall not occupy, use, permit, or suffer the Airspace, the Conveyor Facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.
- l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products (except for the limited use of petroleum products as motor fuel or for lubrication of equipment), pollutants, and other hazardous materials in the Airspace is prohibited. Florida Rock shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the County, or any other

governmental enforcement agency, within the Airspace. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Florida Rock's use of the Airspace, Florida Rock shall be held similarly responsible. Florida Rock shall indemnify, defend, and hold harmless the County from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

- m. Existing utilities and all corresponding easements shall remain in place and Florida Rock shall not disturb or interfere with the same. Florida Rock shall be solely responsible for coordinating construction, maintenance or modification of the proposed use of the Airspace directly with said existing utilities and shall indemnify, defend and hold harmless the County from any claim, loss, damage, cost charge, or expense of said existing utilities arising out of said Florida Rock's construction, maintenance or modification of use of said Airspace.

#### **4. Consideration.**

Florida Rock has secured approval from the County for a truck crossing between the properties across N.W. 41<sup>st</sup> Street, approximately 100 feet west of the east line of Section 23, Township 53 South, Range 39 East. Said approval was granted on October 21, 2002, in conjunction with Tentative Plat No. 20101 on the plans prepared by Fortin, Leavy, Skiles, Inc., dated July 1, 2002, and titled "Florida Rock Industries, Inc. Private Road Crossing Off-Highway Truck Road." Florida Rock agrees as part of the consideration for being granted this license not to construct or use such crossing as long as this License Agreement is in effect and has otherwise not been terminated. The existing crossing on N.W. 41<sup>st</sup> Street may continue to be used by Florida Rock.

#### **5. Indemnification.**

To the extent and within the limitations as may be provided by law, Florida Rock and County shall each indemnify and hold harmless the other and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which either Florida Rock or the County or their officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by Florida Rock or the County or their officers, employees, agents, servants, and instrumentalities. Florida Rock or County shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the other, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Florida Rock expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by any contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

6. **Insurance.**

Florida Rock, at its expense, shall maintain at all times during the term of this Agreement, and shall furnish to the Public Works Department, 111 NW 1st Street, Suite 1610, Miami, Florida 33128, a certificate of insurance which meets the requirements as outlined below:

Public Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

7. **Termination**

- a. This Agreement may be terminated by Florida Rock without cause upon 6 months (180 days) prior written notice by registered mail to the County. After the initial ten (10) year term, this Agreement may be terminated by the County without cause and upon 6 months (180 days) prior written notice by registered mail to Florida Rock, provided however, that the County's termination shall not be arbitrary and capricious.
- b. It is understood and agreed to by Florida Rock that the County reserves the right to terminate this Agreement, in the event Florida Rock violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the County deems it necessary to request the removal of the Conveyor Facility on the Airspace, the removal shall be accomplished by Florida Rock within a reasonable period of time in a manner reasonably prescribed by the County at no cost to the County.
- c. Upon termination of this Agreement, Florida Rock shall deliver the Airspace to the County, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted.

- d. If removal of the Conveyor Facility, improvements, or any part thereof is requested by the County, any such structures shall be removed by Florida Rock at its expense within a reasonable period of time following the termination of this Agreement but in no event sooner than ninety (90) days following the termination.
- e. This Agreement may be terminated by the County upon 6 months (180 days) prior written notice by registered mail to Florida Rock, in the event that the Conveyor Facility ceases to be used for its intended purpose or is abandoned.
- f. This Agreement may be terminated when rock mining operations are no longer conducted, for a period in excess of 12 months, on the properties owned or leased by Florida Rock that are serviced by the Conveyor Facility or in the event that the rock mining operations on such Florida Rock properties serviced by the Conveyor Facility are no longer permitted by the governmental permitting agencies.

## **8. EMINENT DOMAIN**

Florida Rock acknowledges and agrees that its relationship with the County under this Agreement is one of licensee and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement shall not be deemed a taking under any eminent domain or other Federal or State law, including Chapters 70, 73 and 74, Florida Statutes, so as to entitle Florida Rock to compensation for any interest suffered or lost solely as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Florida Rock hereby waives and relinquishes any legal rights and monetary claims which Florida Rock might have against the County for full compensation, or damages of any sort, including special damages, severance damages, removal costs or loss of business profits, including such rights, claims, or damages flowing from properties owned or leased by Florida Rock that are serviced by the Conveyor Facility, but only to the extent those legal rights and monetary claims result from Florida Rock's loss of occupancy of the Airspace and said Conveyor Facility as specified in this Agreement.

Florida Rock also hereby waives and relinquishes any legal rights and monetary claims which Florida Rock might have against the County for full compensation, or damages of any sort but only those legal rights and monetary claims resulting from Florida Rock's loss of occupancy of the Airspace and the Conveyor Facility when any or all of the surrounding properties owned or leased by Florida Rock that are serviced by the Conveyor Facility are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in effect on the date of taking or sale or has been terminated prior thereto.

## **9. MISCELLANEOUS**

- a. The Airspace and Florida Rock's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the County, provided, however, that Florida Rock shall be permitted to transfer the Airspace and/or its rights under this Agreement to any affiliate without the County's consent. Furthermore, the sale or transfer of equity interest in Florida Rock shall not be deemed to be a transfer, assignment or conveyance hereunder.
- b. In the event of breach of any of the above covenants which is not cured within 60 days following Florida Rock's receipt of notice thereof, unless the parties mutually agree to extend the 60-day period to effectuate a cure, the County shall have the right to terminate this Agreement and to re-enter and repossess said Airspace and the Conveyor Facility thereon, and hold the same as if this Agreement had never been made or issued.
- c. During the term of this Agreement, Florida Rock shall, at its own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, the County or local governments, or other lawful authority whatsoever, affecting the Airspace and Conveyor Facility or appearances or any part thereof, and of all insurance policies covering the Airspace and Conveyor Facility, or any part thereof.
- d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.
- e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- f. This Agreement shall not be recorded in the public records of any state, city, county, or other governmental entity, except that it may be recorded in the records of the Clerk of the Board of Miami-Dade County Commissioners.
- g. Florida Rock acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of its choosing. Florida Rock has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties are merged in

this Agreement, which alone, fully and completely express the agreement between Florida Rock and the County with respect to the subject matter hereof. No modifications, waiver or amendment of this Agreement or any of its conditions or provisions shall be binding upon the County or Florida Rock unless in writing and signed by both parties.

- h. Florida Rock shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the Airspace.
- i. This Agreement shall be governed by and will be construed in accordance with the laws of the State of Florida, and any applicable laws of the United States of America, and in the event there is any litigation concerning the terms of this Agreement, proper venue thereof will be in Miami-Dade County.

**10. NOTICE.**

Notices required or permitted to be given pursuant to the terms of this Contract will be delivered in person by facsimile transmission, (provided the original notice is also delivered in person or by mail or delivery service as set forth herein) or sent by certified mail, return receipt requested, postage prepaid, by recognized contract carrier providing signed receipt for delivery, and will be deemed delivered upon receipt or refusal of delivery. Notices will be delivered at the following addresses, subject to the right of any party to change the address at which it is to receive notice by written notice to the other party:

To: FLORIDA ROCK INDUSTRIES, INC., a Florida corporation,  
c/o Mr. John Baker  
155 East 21<sup>st</sup> Street  
Jacksonville, Florida 32206  
Fax: (904) 355-0817

To: Miami-Dade County, a political subdivision of the  
State of Florida  
Miami-Dade County Public Works Department  
111 N.W. 1<sup>st</sup> Street, 16<sup>th</sup> Floor  
Miami, Florida 33128-1993  
Fax: (305) 375-3070  
Attn: Public Works Director



**IN WITNESS WHEREOF**, the parties hereto has caused these presents to be executed in its name, and its Corporate Seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Florida Rock Industries, Inc., a  
Florida corporation

\_\_\_\_\_  
Witness Printed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

\_\_\_\_\_  
Witness Printed: \_\_\_\_\_

Attest: \_\_\_\_\_  
Names: \_\_\_\_\_  
Title: Corporate Secretary

Affix: (CORPORATE SEAL)

MIAMI-DADE COUNTY, a political  
Subdivision of the State of Florida

ATTEST:  
HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
George M. Burgess  
County Manager

Approved as to form and  
Legal sufficiency:

\_\_\_\_\_  
County Attorney

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I **HEREBY CERTIFY**, that on this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, an officer duly authorized to administer oaths and take acknowledgments personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me, or proven, by producing the following identification: \_\_\_\_\_ to be the \_\_\_\_\_ President and \_\_\_\_\_ Secretary of \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_, and in whose name the foregoing instrument is executed and that said officer(s) severally acknowledged before me that (he/she/they) executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

**WITNESS** my hand and official seal in the County and State aforesaid, the day and year last aforesaid.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Printed Notary Name

NOTARY SEAL/STAMP

Notary Public, State of \_\_\_\_\_

**My commission expires:** \_\_\_\_\_

Commission/Serial No. \_\_\_\_\_

The foregoing was accepted and approved on the \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, by Resolution No. \_\_\_\_\_ of the Board of County Commissioners of Miami-Dade County, Florida, a political subdivision of the State of Florida.

**ATTEST: HARVEY RUVIN,**  
Clerk of said Board

By: \_\_\_\_\_  
Deputy Clerk

**EXHIBIT "A"**

Grade-Line Boundary Description  
Miami NW 41<sup>st</sup> Street  
Aerial Easement

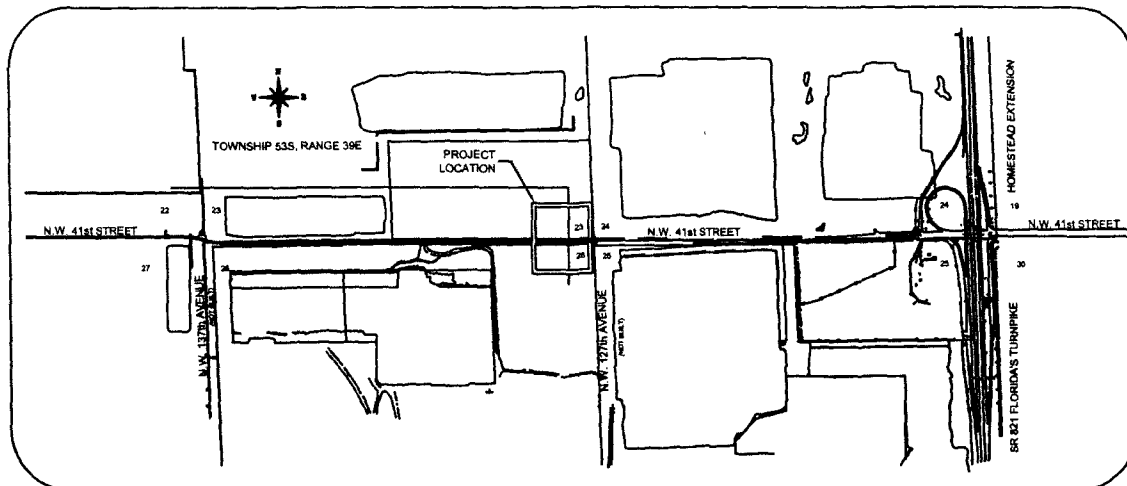
All that tract or parcel of land lying in and being part of Sections 23 & 26, Township 53, Range 39 located in Miami-Dade County, Florida and being more particularly described as follows:

Begin at a Point of Commencement at the northeast corner of Section 26 of Township 53, Range 39 and continue along the northern Section line of said Section in a generally westerly direction along an assumed bearing of S89D50'19"W for a distance of 386.58' to the Point of Beginning; thence, leaving said Section line continue generally north along a bearing of N00D08'36"W for a distance of 50.00' to a point on the northern right-of-way line of NW 41<sup>st</sup> Street; thence, continue along said right-of-way in a westerly direction along a bearing of S89D50'19"W for a distance of 20.00' to a point; thence, leaving said right of way line continue generally south along a bearing of S00D08'36"E for a distance of 50.00' to a point; thence, continue south along the same bearing of S00D08'36"E for another 40.00' to a point lying on the southerly right-of-way of the previously mentioned NW 41<sup>st</sup> Street; thence, continue along said southerly right-of-way line along a bearing of N89D50'19"E for a distance of 20.00' to a point; thence, leaving said right-of-way line continue in a northerly direction along a bearing of N00D08'36"W for a distance of 40.00' to the point of beginning.

Airspace Boundary Description  
Miami NW 41<sup>st</sup> Street  
Aerial Easement

An aerial easement for material handling purposes and all purposes incidental thereto, between elevation 25.0 feet and 50.0 feet according to the North American Datum of 1983 (NAD 83), above said tract or parcel lying in and being part of Sections 23 & 26, Township 53, Range 39 located in Miami-Dade County, Florida and being more particularly described as follows:

Begin at a Point of Commencement at the northeast corner of Section 26 of Township 53, Range 39 and continue along the northern Section line of said Section in a generally westerly direction along an assumed bearing of S89D50'19"W for a distance of 386.58' to the Point of Beginning; thence, leaving said Section line continue generally north along a bearing of N00D08'36"W for a distance of 50.00' to a point on the northern right-of-way line of NW 41<sup>st</sup> Street; thence, continue along said right-of-way in a westerly direction along a bearing of S89D50'19"W for a distance of 20.00' to a point; thence, leaving said right of way line continue generally south along a bearing of S00D08'36"E for a distance of 50.00' to a point; thence, continue south along the same bearing of S00D08'36"E for another 40.00' to a point lying on the southerly right-of-way of the previously mentioned NW 41<sup>st</sup> Street; thence, continue along said southerly right-of-way line along a bearing of N89D50'19"E for a distance of 20.00' to a point; thence, leaving said right-of-way line continue in a northerly direction along a bearing of N00D08'36"W for a distance of 40.00' to the point of beginning.



### PROJECT LOCATION

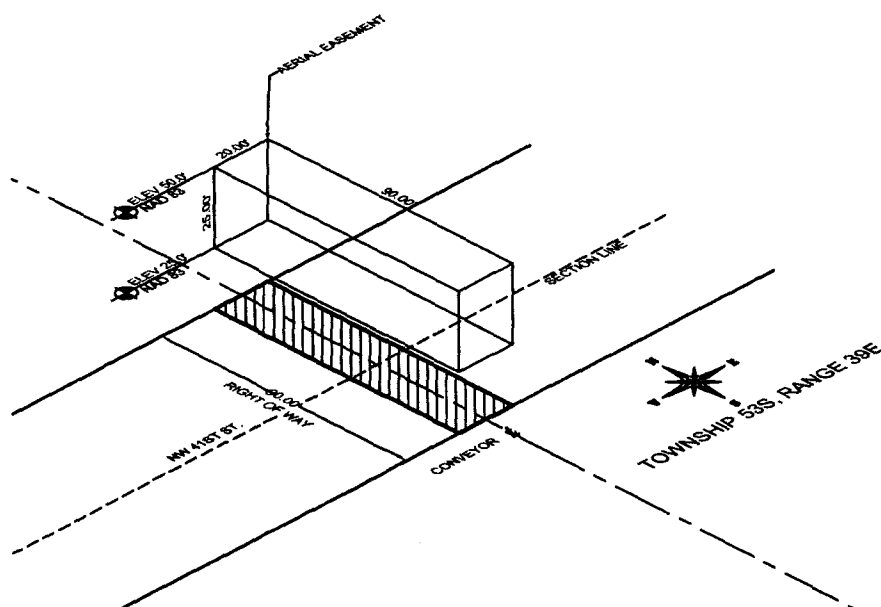
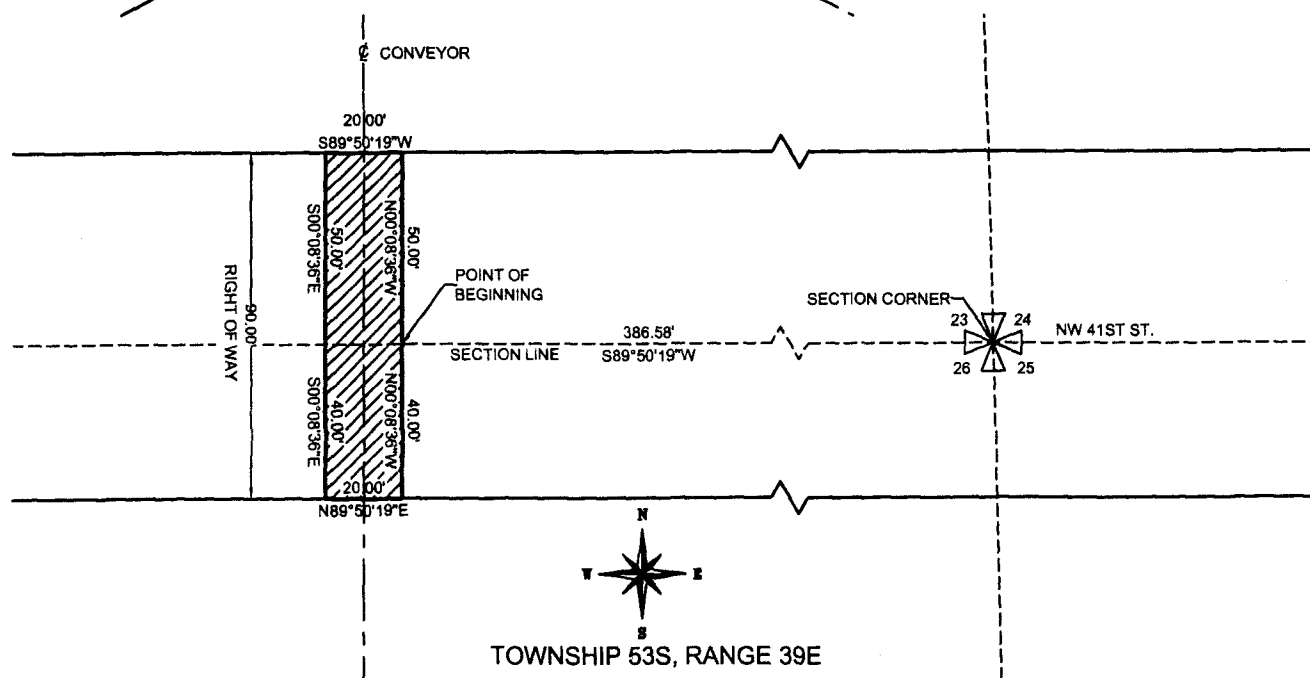


EXHIBIT 'B-2'

## SKETCH OF LEGAL DESCRIPTION



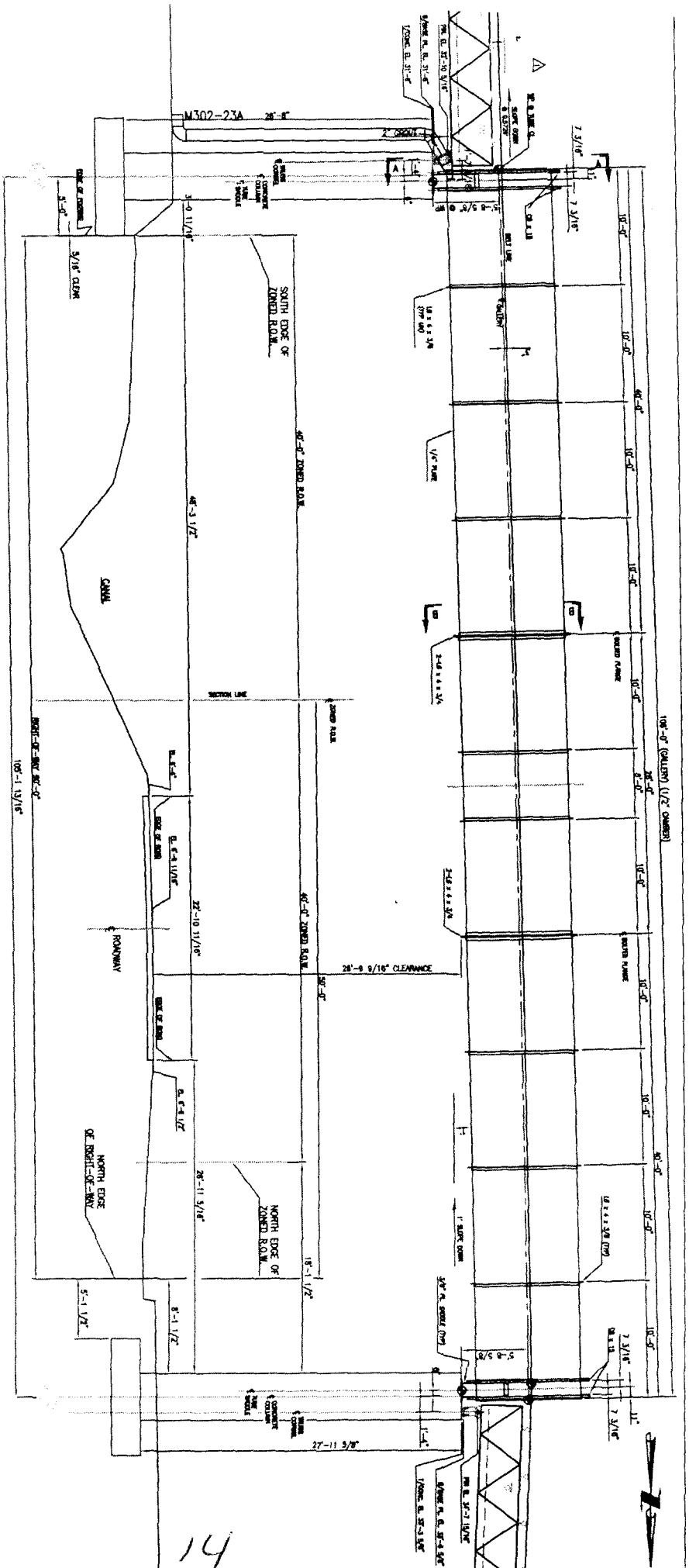


EXHIBIT "C"  
NW 41st STREET  
AERIAL EASEMENT

